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No. 82-281

In The
Supreme Court of the United States

OCTOBER TERM, 1982

DAVID C. TREEN, ET AL.,
Petitioners,

VERSUS

HAYES WILLIAMS, ET AL.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a state official is entitled to assert a qualified immunity defense when his actions do not violate a clearly established constitutional right even though his actions do violate established state law or regulations.

PARTIES TO PROCEEDING

The undersigned, counsel of record for the defendants-petitioners, certify that the following listed parties are all the parties to the proceeding in the Fifth Circuit Court of Appeals.

Hayes Williams, plaintiff-respondent
Arthur Mitchell, Jr., plaintiff-respondent
John J. McKeithen, defendant-petitioner
Louis Sowers, defendant-petitioner
C. Murray Henderson, defendant-petitioner
Lloyd Hoyle, defendant-petitioner
Hayden J. Dees, defendant-petitioner
Robert Bryan, defendant-petitioner
Walter Pence, defendant-petitioner
Bert Dixon, defendant-petitioner
D. M. Wood, defendant-petitioner

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OPINIONS BELOW

The opinion of the United States District Court for the Middle District of Louisiana on the merits of this case on the issues of injunctive relief is unreported, *Williams, et al. v. McKeithen, et al.*, (U.S.D.C. M.D. of La., C.A. No. 71-98-B, unpublished, decided June 10, 1975). In this opinion, the United States District Judge adopted without change the Report and Recommendations, which is unreported, of United States Magis-

trate Frank J. Polozola who was appointed special master in this matter. The opinion of the United States Court of Appeals for the Fifth Circuit affirming the district court's decision and remanding for further proceedings is reported as *Williams v. Edwards*, 547 F.2d 1206 (5th Cir.,1977). On August 6, 1980, United States District Judge Frank J. Polozola issued an unreported opinion denying plaintiffs' claims for monetary damages, *Williams, et al. v. McKeithen, et al.*, C.A. 71-98-B (M.D., La. 1980). Judge Polozola, on August 5, 1980, issued a reported opinion awarding attorney fees to the plaintiffs, *Williams, et al. v. McKeithen et al.*, 495 F.Supp. 707 (M.D., La. 1980), *supra*. The opinion of the United States Court of Appeals for the Fifth Circuit reversing and remanding the District Court's decision on the denial of plaintiffs' claims for monetary damages is reported as *Williams v. Treen*, 671 F.2d 892 (5th Cir., 1982).

JURISDICTION

The panel opinion of the United State Court of Appeals for the Fifth Circuit is dated March 31, 1982. A Motion for Panel Rehearing was denied on April 28, 1982. The Judgment Order from the United States District Court for the Middle District of Louisiana is dated August 6, 1980. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The statute involved in this case is 42 U.S.C. Section 1983:

> "Every person who, under color or any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

STATEMENT OF FACTS

Plaintiffs, Hayes Williams, Arthur Mitchell, Jr., Lee D. Stevenson, and Lazarus D. Joseph, Jr., all (were) inmates at the Louisiana State Penitentiary at Angola, Louisiana, filed a complaint on March 30, 1971 against various Louisiana State officials including administrators and officers of the Louisiana Department of Corrections and the Louisiana State Penitentiary at Angola, Louisiana. The plaintiffs filed their suit pursuant to 42 U.S.C. Section 1983 and alleged among other claims that the overall conditions of confinement at the Louisiana State Penitentiary allegedly violated the Fourteenth and Eighth Amendments of the United States Constitution at the time of and prior to March 30, 1971.

All of the original plaintiffs in this action alleged that the overall conditions of confinement at Louisiana State Penitentiary in 1971 constituted a violation of the Eighth Amendment. They also claimed discrimination based on race which allegedly violated the Fourteenth Amendment. In addition, each plaintiff made individual claims. Hayes Williams and Arthur Mitchell, Jr. claimed that they were punished and moved to a more restrictive

area of the prison without being afforded Due Process of Law in a disciplinary proceeding. Arthur Mitchell, Jr., also alleged that he was denied adequate medical care. Lee Stevenson claimed that he was injured by a fellow inmate due to the defendants alleged failure to take proper precautions to protect him and that his mail to his attorney was censored. Lastly, Lazarus Joseph, Jr., alleged that he was discriminated against because of his religion. All of the aforementioned contentions allegedly occurred prior to the institution of this action on March 30, 1971.

The plaintiffs' complaint prayed for injunctive relief and monetary damages. In response, the defendants filed a Motion for Summary Judgment on July 9, 1971, which was denied on February 21, 1972.

On December 3 and 4, 1973 a hearing on the merits was held before United States Magistrate Frank J. Polozola who was appointed special master to hear argument and evidence on both the injunctive relief and monetary damages claim. Subsequently, in June of 1975, the injunctive relief claim was severed from the claim for monetary damages. Also, in June of 1975, United States District Judge, for the Middle District of Louisiana, E. Gordon West adopted the special master's report without change and found that conditions at Angola "shocked the conscience of any right thinking person" and "flagrantly violated basic constitutional requirements as well as applicable state laws." He further found that "state authorities (were) either failing or refusing to take the necessary steps to correct these conditions." *Williams v. Edwards*, 547 F.2d 1206, (5th Cir., 1977).

Accordingly, Judge West granted broad injunctive relief designed to improve the overall conditions at the facility. *Williams v. McKeithen*, (U.S.D.C., M.D. of La., C.A. No. 71-98-B, unpublished, decided June 10, 1975). It was this order granting injunctive relief by United States District Judge E. Gordon West which was affirmed by the United States Court of Appeals for the Fifth Circuit in *Williams v. Edwards, supra.*

On August 6, 1980, United States District, Judge for the Middle District of Louisiana, Frank J. Polozola issued a ruling with respect to the plaintiff's individual claims for damages. Citing to this Honorable Court's decision in *Procunier v. Navarette*, 434 U.S. 555 (1978), United States District Judge Frank J. Polozola held that insofar as the rights allegedly violated by the prison officials had not been "clearly established" at the times in question, the defendants were immune from personal liability. Based on this, United States District Judge Frank J. Polozola dismissed each of the damage claims.

The four plaintiffs appealed to the United States Court of Appeals for the Fifth Circuit from the dismissal of their individual claims, arguing: (1) that the appeals of all four plaintiffs are properly before this Court, (2) that the trial court erred in finding the defendants immune from personal liability without first holding an evidentiary hearing in which the defendants would be required to assert and prove their entitlement to an immunity, and (3) *that the defendants are in fact not entitled to an immunity because their conduct contravened law which was clearly established at the time of the violations.* The appeals to the United States Court of Appeals for the

Fifth Circuit by plaintiffs Lee D. Stevenson and Lazarus D. Joseph, Jr., were denied for failure to file their Appeals timely. The United States Court of Appeals for the Fifth Circuit reversed the dismissal by United States District Judge Frank J. Polozola as to the damage claims by Arthur Mitchell and Hayes Williams and remanded the case for further proceedings. *Williams v. Treen*, 671 F.2d 892 (5th Cir., 1982).

The United States Court of Appeals for the Fifth Circuit in *Williams v. Treen, supra*, held,

> "(T)hat when a state official violates the constitutional rights of a citizen, and in so doing also violates clearly established state law which enforces those rights, the defendant official is not entitled to an immunity which is based upon reasonable good faith." *Id.* at 900.

The defendants timely applied to the United States Court of Appeals for the Fifth Circuit for a rehearing on this holding: The application for a rehearing was denied by the United States Court of Appeals for the Fifth Circuit on April 28, 1982.

The defendants are now applying to this Honorable Court for a Writ of Certiorari pursuant to 28 U.S.C. 1254(1).

The petitioners here, defendants below, respectfully contend that the only facts pertinent to this application for a Writ of Certiorari are that the original complaint was filed on March 30, 1971 and that on or prior to March 30, 1971 the United States Court of Appeals for the Fifth indicated that no clearly established United

States Constitutional, legislative or jurisprudential right existed as to a state inmate's right to safe and sanitary conditions of confinement. *Williams v. Treen, supra,* at 898-899.

REASONS FOR THE ALLOWANCE OF WRIT

The decision of the Fifth Circuit Court of Appeals should be reviewed because:

> The Fifth Circuit Court of Appeals erred in its interpretation and application of the qualified immunity defense in 42 U.S.C. Section 1983 cases by concluding that when there was a violation of a clearly established state law but no violation of a clearly established federal law at the time of or prior to the filing of an action a state official is not entitled to the qualified immunity defense because the official's belief in the lawfulness of action, under state law, is unreasonable.

State officials are entitled to a qualified immunity from liability for acts done in their official capacity on the basis on an objectively reasonable belief that those acts were not unlawful. *Gomez v. Toledo,* 446 U.S. 635, 100 S.Ct. 1920, at 1923 (1980). This Honorable Court in numerous cases has indicated that when a state official violates the constitutional rights of a citizen, *and* in so doing also violates clearly established state law which enforces those rights, the state official is not entitled to an immunity which is based upon reasonable good faith. *Scheuer v. Rhodes,* 416 U.S. 232 (1974). *Procunier v. Navarette,* 434 U.S. 555 (1978) and *Butz v. Economou,* 438 U.S. 478 (1978). The petitioners respectfully contend that these cases do not stand for the proposition that the

violation of any state law without a corresponding clearly established federal constitutional right automatically defeats the qualified immunity defense.

A Section 1983 Plaintiff must allege a deprivation of a federally protected right in order to set forth a prima facie case, *Maine v. Thiboutot*, 448 U.S. 1(1980); violation of state law alone does not give rise to a cause of action under Section 1983. *Bills v. Henderson*, 631 F.2d 1287 (6th Cir., 1980). In this case, according to the opinion of the Fifth Circuit, the state officials only violated a clearly established state law. *Williams v. Treen, supra*, at 900. This Section 1983 cause of action alleged facts that the federal constitutional rights of these inmates were violated. However, the only clearly established law which was violated by the state officials was a state law. The Fifth Circuit erred in interpreting and applying the test for reasonable good faith as outlined in *Scheuer v. Rhodes, supra, Procunier v. Navarette, supra,* and *Butz v. Economou, supra.*

The test for reasonable good faith is conjunctive in nature. Under this conjunctive test a state official must violate a clearly established state law *and* that state law must enforce a clearly established federally protected constitutional right of a citizen. *Scheuer v. Rhodes, supra, Procunier v. Navarette, supra,* and *Butz v. Economou, supra.*

Prior to and including the filing of the plaintiff's lawsuit there was not a clearly established federal law which stated or implied an inmate's right to safe and sanitary conditions of confinements. The Fifth Circuit acknowledges in its opinion in the instant case that a review of

the Federal Reporter reveals only one Fifth Circuit Opinion "which suggests that conditions such as those at Angola, might violate the constitutional rights of inmates", *Williams v. Treen, supra,* at 898 Even so, the Fifth Circuit considered the findings of the District Court that the conditions of confinement at the Louisiana State Penitentiary were in violation of the state fire, safety, and health regulations, *Williams v. Treen, supra,* at 898-899, as sufficient to conclude that defendant state officials are not entitled to the protections of the qualified immunity defense because the lawfulness of the state officials action is per se unreasonable. Thus, the Fifth Circuit concluded that the defendant-state officials were not in good faith, although there was not a clearly established constitutional right of inmates concerning conditions of confinement up to and including the filing of the plaintiffs' complaint on March 30, 1971. In fact, the Fifth Circuit's holding, if allowed to stand, will raise state law to the level of federal law.

In *Butz v. Economou, supra,* at 2906, this Honorable Court reviewed the jurisprudence concerning when a state official is entitled to the qualified immunity defense and stated:

> Subsequent decisions have applied the Scheuer standard in other contexts. In *Wood v. Strickland,* 420 U.S. 308, 95 S.Ct. 992, 43 L.Ed. 2d. 214 (1975), school administrators were held entitled to claim a similar qualified immunity. *A school board member would lose his immunity from a Section 1983 suit only if "he knew or reasonably should have known that the action he took within his sphere of official responsibility would violate the constitutional*

> *rights of the student affected, or if he took the action with the malicious intention to cause a deprivation of constitutional rights or other injury to the student.*" 420 U.S., at 322, 95 S.Ct., at 1001. In *O'Conner v. Donaldson*, 422 U.S. 563, 95 S.Ct. 2486, 45 L.Ed. 2d. 396 (1975), we applied the same standard to the superintendent of a state hospital. In *Procunier v. Navarette*, 434 U.S. 555, 98 S.Ct. 855, 55 L.Ed. 2d 24 (1978), we held that prison administrators would be adequately protected by the qualified immunity outlined in Scheuer and Wood. We emphasized, however, that, at least in the absence of some showing of malice, an official would not be held liable in damages under Section 1983 unless the constitutional right he was alleged to have violated was "clearly established" at the time of the violation.

Petitioners submit that to allow the holding of the Fifth Circuit to stand would alter the conjunctive test for reasonable good faith under the qualified immunity defense by not allowing state officials to assert it when they have violated a clearly established state law but no clearly established corresponding federal constitutionally protected right exists at the time of the violation of state law. This would place an undue and unreasonable burden upon state officials to be so prescient as to forecast decisions which federal judges find very difficult to make.

CONCLUSION

Petitioners submit that the magnitude of this holding is an important issue of federal law which will have significant ramifications for all state correctional sys-

tems and state officials involved in those systems because of the broad spectrum of prisoners' rights and newly evolving standards to which state official must conform. Because of the above and foregoing it is necessary for This Honorable Court to grant certiorari in this case.

Respectfully submitted,

BY: _____

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing petition for Writ of Certiorari has been placed in the United States Mail, postage prepaid to Mr. George M. Sticker, counsel for the Respondents.

This 27th day of July, 1982.

_____

J. MARVIN MONTGOMERY

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AFFIDAVIT

STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned Notary Public duly commissioned and qualified in and for the Parish and State aforesaid personally came and appeared.

J. MARVIN MONTGOMERY

who, being by me duly sworn did depose and say that:

He is a member of the Bar of the United States Supreme Court.

He mailed the petition for Writ of Certiorari on July 27, 1982 by placing it in first class United States Mail, properly addressed to the Clerk of the U.S. Supreme Court and postage prepaid.

SWORN TO AND SUBSCRIBED BEFORE ME

this ____ day of _____, 1982, at Baton Rouge, Louisiana.

_____

J. MARVIN MONTGOMERY

_____

BRADY LOUIS JONES, III
NOTARY PUBLIC